IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 297 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHEMAJI RUPAJI KHANDERA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR EE SAIYED for Appellant(s) : 1 - 2.
MR HL JANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.This appeal under Sec.374 of the Code of

Criminal Procedure (hereinafter referred to as `the Code' for short) has been preferred by the appellants, original accused Nos.1 and 2, who have been charged and tried for the offences punishable under Sections 498-A, 302 read with Section 34 of Indian Penal Code in Sessions Case No.205 of 1996 wherein they were convicted for the offence punishable under Sec.302 read with Sec.34 of IPC and sentenced to suffer for life imprisonment and fine of Rs.500/-, in default, to suffer rigorous imprisonment for three months by the learned Additional Sessions Judge, Court No.6, Ahmedabad City, Ahmedabad, by the judgment and order dated 20-3-1997. They were however acquitted for the offence under Sec.498-A of IPC. Against the acquittal of the appellants for the offence under Sec.498-A of IPC, the State has not preferred any appeal and hence, it has become final between the parties.

2. This matter has been placed in our board for final hearing in the present sitting. However, when it has been taken up, we came to know through learned APP, Mr.H.L.Jani, that both the appellants are absconding. Therefore we requested learned APP to verify the same from the jail authorities and submit the report. Learned APP, on verifying the

facts from the jail authorities, submitted the report which shows that the appellant No.1-Khemaji Rupaji Khandera and the appellant No.2-Manjulaben Khemaji Khandera, who were undergoing sentence, were released on furlough leave for a period of 14 days on 8-6-2001. However, they did not surrender on the expiry of said leave i.e. on 22-6-2001 but remained absconding since last more than six years. However, with the consent of the learned advocates appearing for the respective parties, we have proceeded with the matter. The said report is taken on record.

3. The case of the prosecution in short is that the accused No.1-Khemaji Rupaji Khandera had initially married to Manjulaben i.e. the accused No.2 and thereafter, victim-Ratanben also entered in his life as the second wife. On the day of incident i.e. on 2-4-1996, deceased Ratanben was staying along with accused No.1 in Block No.31, Ayodhyapark Society, Isanpur, Ahmedabad. At about 7.00 a.m. on the said day, the accused No.2-Manjulaben, first wife of accused No.1 was also there and some altercation took place between them. At that time, the accused Nos.2 and 1 insisted Ratanben to leave the house. However, Ratanben refused to leave and hence,

the accused No.2 got incited and caught hold of her while accused No.1 poured kerosene on her and set her on fire. On hearing the shouts for help, neighbours tried to enter into the house to save Ratanben but could not save as the accused had locked the door from inside. Thereafter, the accused took the victim to L.G.Hospital where she was admitted as an indoor patient in the burns ward and history has been given by the accused. Police Inspector, Vatva Police Station, recorded the complaint of the victim in the hospital itself wherein she narrated the incident in detail along with the role alleged to have been played by the accused along with motive. Said complaint has been sent with report to Vatva Police Station for registering the offence whereupon offence was registered as Vatva Police Station I.C.R.No.143 of 1996 for the offences punishable under Secs.307, 114 and 498-A of IP Code and started investigation. As physical condition of the victim was found to be serious, yadi was sent to the Executive Magistrate for recording her dying declaration. In-charge doctor of the said ward on examination of the victim opined that the patient was conscious and able to speak. On receiving the yadi, learned Executive Magistrate visited the victim in

the burns ward of L.G.Hospial and ascertained the physical condition of the victim. He also took care and caution to see that no relatives or other interested persons or police officer remain present at the time of recording the dying declaration of the victim. Thereafter, dying declaration of the victim was recorded on 2-4-1996 wherein she categorically narrated the incident including the role played by the accused. She stated that Manjulaben, first wife of accused No.1, caught hold of her and her husband, accused No.2-Khemaji poured kerosene and ignited her. She also described the clothes worn by her at the time of incident. Even motive has also been disclosed by her by stating that since she entered into the life of Khemaji as the second wife, it was not liked by Manjulaben and hence, Manjulaben was harassing her. After dying declaration was recorded and the victim was under treatment, she succumbed to the injuries sustained. The concerned Officers therefore made arrangements for inquest panchnama and also prepared Marnotar Form and sent dead body of the deceased for post mortem. After performing post mortem, opinion was given about cause of death. Simultaneously, report was also sent to concerned learned Magistrate to add Sec.302

of IP Code. Thereafter, further investigation was done by the Investigating Officer. He also recorded the statements of various witnesses, drew panchnama of scene of offence, collected the muddamal and sent the same to FSL for analysis. Meanwhile, accused were arrested and sent them to judicial custody. On arrival of post mortem and FSL reports, same were kept in investigation file. At the end of investigation, charge sheet was submitted into the Court of learned Metropolitan Magistrate, Ahmedabad, against both the accused for the offences punishable under Secs.498-A, 302 read with Sec.34 of IP Code. As the offences alleged against the accused were exclusively triable by Court of Sessions, learned Metropolitan Magistrate committed the case to the City Sessions Court, Ahmedabad, where it was numbered as Sessions Case No.205 of 1996 and sent to learned Addl. City Sessions Judge, Court No.6 for disposing of the same on merits.

4. Upon presentation of the accused in the Court, learned Addl. Sessions Judge framed charge against the accused at Ex.2 for the offences punishable under Secs.498-A, 302 read with Sec.34 of IP Code. Charge was read over and explained to the accused. The accused pleaded not guilty to the charge and

prayed for trial.

5.To prove the charge against the accused, prosecution examined in all 10 witnesses. They are as under:

1)Manjulaben P.W.1, Ex.11.

2)Natvarlal, P.W.2, Ex.12.

3)Babubhai Kanjibhai Rana, P.W.3, Ex.13.

4)Manubhai Chhotalal Bhatt, P.W.4, Ex.14.

5)Jasvantlal Maganlal Raval, P.W.5, Ex.16.

6)Safiahmed Sarfuddin, P.W.6, Ex.19.

7)Dr.Kamlesh Prahladbhai Patel, P.W.7, Ex.21.

8)Dr.Madhusudan Atmaram Patel, P.W.8, Ex.23.

9)Babubhai Devsibhai, P.W.9, Ex.26.

10)Hussainmiya Saifuddin Saiyed, Investigating Officer, P.W.10, Ex.29.

Prosecution also placed reliance upon various documentary evidence such as complaint Ex.27, report of the registration of offence Ex.28, panchnama of scene of offence Ex.20, certificate issued by L.G.Hospital to deceased Ratanben Ex.22, post mortem report Ex.24, letter written to FSL regarding muddamal Ex.32, receipt given by FSL Ex.33, report given by FSL Ex.34, dying declaration Ex.18, yadi for inquest panchnama Ex.30 and inquest panchnama Ex.31. On submission of closing pursis by the prosecution, learned Add. City Sessions Judge recorded further statement of the accused under Sec.313 of

Code qua the incriminating question connecting the accused with the crime in question. The accused neither examined any witness nor stepped into the witness box. Therefore, after hearing the learned counsel appearing for the respective parties, learned Addl. City Sessions Judge delivered the impugned judgment whereby both the accused were convicted and sentenced as aforesaid, giving rise to prefer the present appeal.

6. We have heard leaned counsel for the appellants, Mr.E.E.Saiyed and learned APP, Mr.H.L.Jani for the respondent-State.

7. Mr.Saiyed, taking us through oral and documentary evidence as well as through the impugned judgment delivered by the court below, has argued that no cogent and convincing evidence has been produced on record to connect the appellants with the crime in question. According to him, conviction is based solely on the dying declaration of the deceased which is a weak piece of evidence in this case. There are no other evidence to connect the appellant with the crime in question and in absence of any corroborative piece of evidence, appellants ought not to have been convicted but ought to have been acquitted. Since there are no eye witnesses to the incident, it creates doubt

about commission of offence by the appellants and therefore also, appellants require to be acquitted. There are many contradictions in the statements of prosecution witnesses. Not only that, theory of self pouring kerosene cannot be ruled out looking to the facts and circumstances of the case. It is therefore requested that the judgment and order of conviction and sentence require to be quashed and set aside and the appellants be acquitted.

8. Learned APP, Mr.Jani, on the other hand, has supported the judgment and order of conviction on the ground that prosecution could prove the offence under Sec.302 against the appellants accused beyond reasonable doubt. It is further argued that if dying declaration appears to be trustworthy and free from doubt, court can certainly rely upon the same for basing conviction without seeking any corroboration. After taking us through the relevance evidence on record and relevant portion of the impugned judgment, it is contended that prosecution could prove that the dying declaration is trustworthy and free from doubt. It could also prove that case is of homicidal and not of suicidal. Moreover, motive is also established in this case though not required in this type of

case. Over and above, presence of the appellants is also established as the deceased and the accused No.1 were staying under one roof. She has also taken us through other evidence on record and argued that even prosecution got support from other evidence on record. Taking us through post mortem report, FSL report and inquest panchnama, it is argued that it is a heinous crime wherein young lady was mercilessly killed by the accused by setting her on fire. Even nobody could come into the house to save her as the accused had locked the door from inside as is reflecting from the evidence of neighbours, who came there to save the victim.

9. We have given thoughtful consideration to the arguments advanced by the learned counsel for the respective parties along with the reasoned judgment and order of conviction and sentence delivered by the court below.

10. It is required to be noted that for the purpose of deciding this appeal, following evidence are required to be taken into consideration.

11. P.W.1 Manjulaben Premjibhai Rabhadiya Ex.11, P.W.2 Natvarbhai Premjibhai Ex.12 and P.W.3 Babubhai Kanjibhai Rana Ex.13 are the important witnesses. Out of them, two are

neighbours who were present at the time of incident. They are also the witnesses of physical and mental cruelty meted out to the deceased Ratanben. They have categorically narrated the incident in detail before the police and even before the Court also. They have been thoroughly cross examined by the learned counsel for the appellants into the court below. However, nothing contrary has come out which shake their evidence. As per their evidence, when the incident took place at about 7.30 a.m., they were there in their respective houses. It is required to be noted that as the incident took place at 7.30 a.m., generally people would be in their respective houses and, therefore, even on that ground also, presence of these three witnesses cannot create any doubt in the mind of the Court. They cannot be treated as chance witnesses either. It reflects from their evidence that they tried to save the victim by reaching at the place of incident but the accused were so certain of their actions that they locked the door of the house from inside to see that nobody reaches to save the victim. As per the evidence appearing on record, victim was taken to L.G.Hospital in an ambulance by both the accused and therefore, history was given by them in the

case papers before the concerned Clerk who was issuing the case papers and hence, it has no much value. Facts however remain that condition of the victim was not good and hence, concerned Police Constable in the L.G.Hospital informed Vatva Police. As it was a medico-legal case, PSI came to L.G.Hospital in the burns ward and inquired about the incident from the victim and thereafter recorded the complaint of the victim in detail and sent the same for registration. This has been proved through the evidence of Investigating Officer who recorded the complaint. It is also proved that after taking opinion from the concerned doctor, he prepared yadi, took the endorsement of the concerned doctor in it and sent to the Executive Magistrate for recording the dying declaration. Executive Magistrate therefore rushed to the place of offence and recorded the dying declaration of the victim in question-answer form. He has signed the same and has also taken thumb impression of the deceased. Executive Magistrate has been examined by the prosecution as P.W.5, Jasvantlal Maganlal Raval at Ex.16 and through him, prosecution has proved yadi Ex.17 as well as dying declaration Ex.18.

12.We have also gone through the oral evidence

of Executive Magistrate, yadi Ex.17, dying declaration Ex.18 and the cross examination made by the learned counsel for the appellants into the court below. We are fully satisfied that before recording the dying declaration, Executive Magistrate has taken proper care and caution as is evident from the yadi and his evidence itself. He has also ensured from the victim before recording the dying declaration that she was not tutored. He has also taken care to see that no relatives or police officers remain present while recording the dying declaration. There is evidence on record to show that at the time of recording the dying declaration, her physical and mental conditions were fit and same has been recorded in question-answer form wherein role of the present appellants has been categorically stated by her. Thus, through the above referred evidence also, the prosecution is able to prove the guilt against the accused beyond reasonable doubt. The law on this point is very clear that if dying declaration is trustworthy and free from doubt, conviction can be based relying solely on the said dying declaration without going for any corroboration. Reliance is placed on the cases of Rameshkumar Madaji Marwadi Vs. State of Gujarat, 1999(1) G.L.H.

94, Laxman Vs. State of Maharashtra, (2002)6 S.C.C. 710 as well as Rambai Vs. State of Chhatisgarh, (2002)8 Supreme Court Cases 83. However, the prosecution could get corroboration by way of second dying declaration recorded by the Investigating Officer by way of FIR Ex.27. The prosecution could also get corroboration from the evidence of P.Ws.1,2 and 3 including the brother of the deceased who has given evidence qua physical and mental torture suffered by his sister at the instance of accused.

13. We have also kept in mind the conduct of the accused at the time and after the incident. It is to be noted that at the time of incident, the accused did not allow anybody to come to the rescue of the victim. Still, however, some neighbouring witnesses tried to save her by reaching the house of the accused but could not save the victim as the door was locked from inside by the accused. It is also established from the arrest memo that both the accused have even not tried to save the victim as arrest memo shows that there were no injuries or any type of burns on or any part of their bodies. Not only that, after taking the victim to the hospital, both have left L.G.Hospital which shows their conduct.

14.It is required to be noted that at the time of incident, she was carrying pregnancy and that might also be one of the causes to kill her by the accused-No.2 with the help of accused No.1 as the accused No.2 was not having any issue. In short, it is a cruel well planned murder having taken place in the matrimonial home of the victim and while executing their plan, they made sure that nobody should come to rescue her and hence, door has been locked from inside. This cruel act of the accused cannot be taken lightly by this Court. As this type of incident takes place in four corners of the house, independent eye witnesses may not be available to the prosecution. If at all available, they will only be the family members of the accused and certainly they may not support the case of the prosecution and, therefore, the standard of proof will be different while dealing with this type of offence and hence, Court should not insist for independent witness because as stated above, this type of incident takes place in four corners of the house. In these circumstances, the arguments advanced by the learned counsel for the accused that there are no eye witnesses and neighbours have not supported the prosecution do not inspire

confidence in the mind of this Court. The court below while delivering the reasoned judgment and order has taken sufficient care in dealing with all the aspects and has narrated the evidence in detail and therefore, same are not being repeated here.

15.Thus, we are of the opinion that the impugned judgment and order of conviction passed by the court below is just, legal and proper and hence, no interference is required by this Court in the present appeal. Hence, this appeal is required to be dismissed.

16.The appeal is dismissed.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI, J.)

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